

EXHIBIT 6

John Liveratti

November 17, 2005

Carson City, NV

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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CERTIFIED COPY

In re: PHARMACEUTICAL
INDUSTRY AVERAGE WHOLESALE
PRICE LITIGATION

MDL DOCKET NO.
CIVIL ACTION
01CV12257-PBS

THIS DOCUMENT RELATES TO:
ALL ACTIONS

DEPOSITION OF
JOHN LIVERATTI
November 17, 2005
Carson City, Nevada

REPORTED BY: CONSTANCE S. EISENBERG, NV CCR #142, RMR

Henderson Legal Services
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1 BE IT REMEMBERED that on Thursday, November
2 17, 2005, at the hour of 9:15 a.m. of said day, at
3 the offices of The Nevada Attorney General, 195 North
4 Carson Street, Carson City, Nevada, before me,
5 CONSTANCE S. EISENBERG, a notary public, personally
6 appeared JOHN LIVERATTI, who was by me first duly
7 sworn, and was examined as a witness in said cause.

8
9 JOHN LIVERATTI called as a witness, having been duly
10 sworn, testified as follows:

11 EXAMINATION BY MR. LITOW:

12 Q Good morning, Mr. Liveratti.

13 A Hi.

14 Q My name is Jason Litow. I'm with the law
15 firm of Covington & Burling in Washington, D.C.;
16 along with my cocounsel, Ron Dove, who represents the
17 pharmaceutical company GlaxoSmithKline, which is one
18 of the defendants in this action.

19 Will you please state and spell your name
20 for the record.

21 A John Liveratti, L-i-v-e-r-a-t-t-i.

22 Q What is your current business address?

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1 Q Have you ever heard of the term "AWP"?

2 A Yes.

3 Q And what's your understanding of what that
4 term means?

5 A Average wholesale price.

6 Q What's your understanding of what average
7 wholesale price is?

8 A It's a figure established of what the
9 industry sells a product for.

10 Q But you haven't read any articles about
11 AWP?

12 A No.

13 Q When did you first learn about this
14 litigation?

15 A This -- earlier this year.

16 Q Would you be more specific?

17 A I don't remember the day. The day we came
18 in for the meeting, there was probably two weeks
19 notice about the meeting, and I really don't know
20 when that was.

21 Q So it was about roughly four or five months
22 ago, I believe you testified?

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1 A I think so, yeah.

2 Let's see. Four or five months ago,
3 that's May. That's still during -- the legislative
4 session is in play. This is late, the bottom of my
5 concern. I'm trying to wrap up stuff in the
6 legislature. I just don't remember.

7 Q Have you prepared any notes in preparation
8 for this deposition?

9 A No.

10 Q Since you haven't been deposed before, I'm
11 just going to go through the process of a deposition,
12 which I could have done in the beginning.

13 But I'll ask the questions. You, as the
14 deponent, will respond. You need to respond verbally
15 so that the court reporter can take down an answer.
16 So you can't shake your head or say "uh-huh."

17 At times, your attorneys may object.
18 Unless instructed by him or her not to answer, you
19 are still required to answer the question posed, even
20 though there's an objection.

21 If you don't understand a question, just
22 ask me to clarify it, and I'll be happy to do so. If

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1 **did you become the compliance chief?**

2 A July 2003.

3 **Q What is the SURS unit that you referred to?**

4 A SURS reviews utilization and fraud and
5 abuse for the Division. They review complaints from
6 providers, review complaints from recipients. They
7 do statistical analysis of claims paid.

8 **Q What type of complaints from providers**
9 **would you generally get?**

10 A Usually when they -- we have had a couple
11 of complaints where providers would, basically, rat
12 each other out about competition stuff or they are
13 not providing the care that they are claiming to.

14 What happens is, a worker in a certain
15 provider area would be there and would see things
16 that were not acceptable practices. They would
17 leave, and then as they would leave and go to another
18 business, same type of provider oftentimes, they
19 would send us an anonymous letter or a signed letter
20 of practices going on in that provider that they just
21 left.

22 And, you know, it's sour grapes sometimes, you

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1 know. They don't like the people and sometimes they
2 are doing stuff that's wrong. So our staff would go
3 in and make some inquiries and review the information
4 that they have. If they found anything, you know,
5 they would contact them and talk to them.

6 Q Were these complaints generally in writing?

7 A Yeah, either from an email or in a letter.

8 Q Did you ever receive complaints from
9 providers that the reimbursement level they were
10 receiving was too low?

11 A We would receive that -- I received that in
12 transportation. I received that in dental. Yes.

13 Q And where would these provider complaints
14 be kept?

15 A Well, I had a file for those kind of issues
16 in my -- you know, in my office.

17 Q And how long would you retain these
18 complaints?

19 A Well, I normally keep them for about three
20 years.

21 Q Do you know whether this file of provider
22 complaints has been searched for documents responsive

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1 MR. LITOW: Yes, set it aside. Thank
2 you.

3 At this time, I would like the court
4 reporter to mark as Exhibit Liveratti 002, a document
5 bearing the Bates numbers NV 03760 through NV 03793,
6 which is titled "Authorized Record Retention and
7 Disposition Schedules," dated June 9, 2004.

8 (Exhibit Liveratti 002 marked for
9 identification.)

10 BY MR. LITOW:

11 Q Take a moment to review the document.

12 A I haven't reviewed it ever, so I know it's
13 not going to make any difference.

14 Q Can you identify this document?

15 A Yeah, I provided this to Tim. It's the
16 retention policy that the Division has, is operating
17 under.

18 Q It's dated June 9, 2004. Do you know
19 whether this is the document policy that is currently
20 in effect?

21 A Yes.

22 Q It is?

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1 A Yes, it is.

2 Q Were there prior retention policies?

3 A Not that I'm aware of, no.

4 Q So there were no -- there was no retention
5 policy prior to June 9, 2004?

6 A I'm not aware of an official one. What I
7 do know that happened was state archives wanted to
8 meet with various organizations of the state, bodies
9 of the state, to tell them what their retention
10 policy was, or what the State's was. And they worked
11 with Department of Human Resources in establishing a
12 records retention policy, and out of that came this.

13 And so our staff worked on it -- and when
14 I say "our staff," I'm including the entire staff.
15 And pretty much, it would have been Rhedith Mackie
16 and Pat Manning that were involved in this part of
17 it. They are the administrative assistants for the
18 deputy and the administrator.

19 Q Does the document retention policy cover
20 electronic documents such as email?

21 A I don't know.

22 Q Who is primarily responsible for

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1 **administering the retention policy?**

2 A Rhedith pretty much handles it, Rhedith
3 Mackie. Basically, what happens is it's -- you know,
4 we're kind of an agency that doesn't have a whole
5 bunch of space. And so when we exceed our file
6 cabinets, it's pretty much when we file. Okay. Those
7 are our personal files.

8 We also have Medicaid record files on
9 recipients, which we keep. And when that -- we have
10 a bunch of files over there. When that gets to a
11 point where we have to make room for the next coming
12 year's files, she goes -- she has a process where she
13 goes through -- goes through and pulls a certain
14 number of years or a certain number of files and
15 archives them, and she follows this policy when she
16 does that.

17 So when somebody comes to her about their
18 own records or files or documents, then she tells
19 them how and what they need to do on meeting this
20 criteria. So everybody sends their needs to Rhedith,
21 and she instructs them what they need to do and she
22 helps them do it.

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1 Q Has this policy been distributed to all the
2 employees in the Division?

3 A I think it has.

4 Q Have you seen it before?

5 A Yeah, I have seen it before.

6 Q You said you were the one that gave it to
7 Mr. Terry; is that right?

8 A Yes.

9 Q Turn to the second page of this document,
10 number 3761, and direct your -- about the middle of
11 the page, the section on "Disposition Holds,
12 Litigation." Do you see that? Just take a moment
13 just to look that over to yourself, please.

14 Can you please describe to me what that
15 section of the policy requires.

16 A Well, we should discuss with our AG before
17 we would destroy anything to see if there's anything
18 pertinent in an ongoing lawsuit.

19 Q And it also requires that records
20 pertaining to litigation be identified, separated
21 from other files, and protected; is that correct?

22 A Yes.

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1 Q And that all destruction of records
2 pertaining to the lawsuit must be stopped until the
3 legal action has been resolved; is that correct?

4 A Yes, it does.

5 Q Are you aware of whether any such hold is
6 in effect as a result of this case?

7 A No, I'm not.

8 Q Who would issue such a hold?

9 A I don't know.

10 Q So you never received any instructions from
11 anyone to preserve documents that might be related to
12 this case; is that correct?

13 A That's correct. What -- you know, we found
14 out about this about five months ago.

15 Q I understand.

16 A Okay. So there's not a whole bunch that
17 has been destroyed in five months. I can probably,
18 you know, give you my best assurance that when we
19 first heard about this, you know, we went out and
20 looked for everything that we could and we provided
21 it. So I don't really think that anything has been
22 destroyed, although I can't say that it hasn't.

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1 Q This case was first initiated in January of
2 2002. Are you aware of whether any action was taken
3 between January 2002 and the time when you first
4 learned of this lawsuit about four or five months
5 ago, to preserve documents?

6 A No, I'm not.

7 Q Are you aware of any efforts that were made
8 to ensure the preservation of emails that might
9 pertain to this litigation?

10 A No, I'm not.

11 Q Are you aware of any efforts to preserve
12 the files of employees who left the Medicaid division
13 to ensure that any of their relevant documents were
14 not destroyed?

15 A No, I'm not.

16 MR. LITOW: Take about a five-minute
17 break.

18 MR. DOVE: Ten-minute break.

19
20 (A recess was taken.)

21 MR. LITOW: Back on the record.

22 BY MR. LITOW:

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1 Q Mr. Liveratti, I think you testified that
2 you had produced that Exhibit Liveratti 002, the
3 document retention policy, to counsel; is that
4 correct?

5 A That's correct.

6 Q Did you conduct a search for document
7 retention policies at somebody's request?

8 A Actually, I thought -- I knew we had an
9 administrative manual, and a large portion of the
10 administrative portion hasn't been finalized. And I
11 didn't think that our retention policy had been
12 finalized. So I went to see if it was still in draft
13 form, and the draft form would still have had
14 language of the welfare division because that's where
15 I stole it from.

16 But I didn't find it in there. And so, I
17 thought okay, I know we have some kind of policy. So
18 I went and talked to Rhedith, and she says -- you
19 know, she gave me this. Oh, okay.

20 Q Do you know if there are -- strike that.

21 At this time, I would like to ask the
22 court reporter to mark as the next exhibit, Exhibit

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1 Liveratti 003, a document entitled "Agency-Specific
2 Records Retention Schedule" with a date stamp on the
3 bottom of March 8th, 2004.

4 (Exhibit Liveratti 003 marked for
5 identification.)

6 BY MR. LITOW:

7 Q Mr. Liveratti, do you recognize this
8 document?

9 A No. But it looks like it was the precursor
10 to this one.

11 Q When you say "precursor to this one," you
12 mean the precursor to Exhibit Liveratti 002; is that
13 correct?

14 A Yes, that's what it looks like.

15 Q Is this a draft of the June 9th, 2004
16 document, retention policy?

17 A I have no idea. Based on the title, I
18 would imagine that it would have been a draft, yes,
19 but I don't know that.

20 Q And do you know who would know that?

21 A Rhedith Mackie might.

22 Q It says "Rita's copy" on the top right.

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1 **It's Rita Mackie?**

2 A It's R-h-e-d-i-t-h.

3 MR. LITOW: I would like to ask the court
4 reporter to mark as Exhibit Liveratti 004, a document
5 entitled "Committee to Approve Schedules For the
6 Retention/Disposition of Official State Records,
7 Agency Specific Records Retention Schedule."

8 Could we go off the record for a minute.

9 MS. BRECKENRIDGE: Sure.

10 (A discussion was held off the
11 record.)

12 (Exhibit Liveratti 004 marked for
13 identification.)

14 BY MR. LITOW:

15 **Q Mr. Liveratti, just take a moment to look**
16 **at that document as well.**

17 **Have you ever seen that document before?**

18 A No, I haven't.

19 **Q Can you identify what it is.**

20 A It says the committee to approve schedules
21 for the retention and disposition of official state
22 records.

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1 **Q Do you know whether it's -- it's a draft of**
2 **Exhibit Liveratti 002 that we looked at before?**

3 A I don't know that.

4 **Q Do you know who would know that?**

5 A I don't.

6 MR. LITOW: At this time, I would like to
7 ask the court reporter to mark as Exhibit Liveratti
8 005, a document entitled "Defendant's First Set of
9 Interrogatories and Requests For Production to the
10 State of Nevada."

11 (Exhibit Liveratti 005 marked for
12 identification.)

13 BY MR. LITOW:

14 **Q Mr. Liveratti, have you ever seen this**
15 **document before?**

16 A Yes, I have.

17 **Q When was that?**

18 A Sometime this summer.

19 **Q And who gave it to you?**

20 A I think Mr. Terry gave it to me. I think
21 it was sent over to our agency, maybe to Chuck,
22 Charles Duarte. He gave me a copy of it. If it -- I

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1 think that's how I got it.

2 Q Can you please describe the steps that you
3 took to search for and produce documents responsive
4 to the requests in that exhibit.

5 A Sure. I went through the exhibit, and I
6 looked at every question or request in here. And I
7 tried to mark on it who might have this, if I had
8 this, or if I had no idea, I put like a question
9 mark, "no clue" or something like that. But I think
10 that's what I did.

11 And what happened was, I believe I
12 produced everything I could for our first meeting --
13 took you by surprise and the other guy that we had
14 everything.

15 MR. TERRY: The State.

16 THE WITNESS: That we produced everything
17 that I had.

18 BY MR. LITOW:

19 Q So you are talking about you produced
20 everything that you had had in your files; is that
21 correct?

22 A Everything that I could find that related

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1 to this that I had, I brought copies of over. And --

2 Q And you mentioned that you also identified
3 those requests for which others might have
4 information; is that correct?

5 A That's correct.

6 Q And then did you, then, ask those
7 individuals to search for documents?

8 A No, I did not. I think what I did was, we
9 had this meeting, and because I don't know how many
10 other people would have had this, but if Chuck would
11 have given it out, he'd have probably given it out to
12 the deputy administrator, the fiscal officer and
13 Colleen and maybe to the rates chief. So I would
14 have expected that they would have done what I did,
15 but I don't know that.

16 But what I do know, what I did was, when
17 I came over to that meeting, I think we discussed
18 some of these things and who might else know, you
19 know, these responses. So I think I told Tim and --
20 I don't remember, is the gentleman's name Dennis? Is
21 that the guy's name?

22 MR. TERRY: Steve Berman.

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1 THE WITNESS: Steve.

2 I think I may have said to them what I
3 knew.

4 BY MR. LITOW:

5 Q So that I understand, your involvement was,
6 one, going through the document requests and
7 searching your files for any documents that you might
8 have to respond; is that right?

9 A That's correct.

10 Q And two, identify those requests where
11 others might have documents and then inform counsel
12 of who those individuals might be; is that correct?

13 A That's correct. And then I did produce
14 what I had.

15 Q Right.

16 Could you please describe for me the
17 search that you undertook of your own files. And by
18 that, I mean which of your files did you search
19 through?

20 A I searched them all. I don't have a whole
21 bunch, and I went through all my files.

22 Q Did you search through your emails?

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1 A No. But I don't believe I would have had
2 any relevant to that. I would have had things about,
3 you know, setting up the hearings for a state plan
4 change, but it would have only been to set the date
5 and stuff like that.

6 Q I guess I would just ask that you search
7 through your emails and confirm that there are --
8 whether or not there are responsive documents in your
9 emails.

10 MS. BRECKENRIDGE: We'll be getting you a
11 proposal for how to handle the emails. I don't mind
12 asking Mr. Liveratti to do that either, but I have
13 talked to him about that in the past. But we'll also
14 be doing something as well.

15 THE WITNESS: You expect me to find this
16 in archives? Let me tell you --

17 MS. BRECKENRIDGE: We'll talk. That's
18 why I'm saying it has to be a more methodical
19 approach, I think.

20 BY MR. LITOW:

21 Q Did you instruct the employees that work
22 under you in the compliance unit to search through

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1 **their files for responsive documents?**

2 A Yes.

3 **Q And how did you communicate this**
4 **instruction to them? Was it in writing or verbally?**

5 A Picked the phone up and said either come to
6 my office or go look.

7 **Q And so did all of your employees search**
8 **through their files?**

9 A Yes.

10 **Q Any documents they had found were given to**
11 **you, is that correct, and then you would pass those**
12 **on to counsel?**

13 A That's correct.

14 **Q Were records that are in storage or**
15 **archives searched for responsive documents?**

16 A No.

17 One second. Can I clarify it?

18 MS. BRECKENRIDGE: Yes, he'll be happy to
19 have you clarify.

20 BY MR. LITOW:

21 **Q Go ahead.**

22 A We didn't search, but what I did was, I

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1 produced a ledger of other -- of what was contained
2 in the archive documents, so to speak.

3 Q When you say "produce," you mean you gave
4 that to counsel?

5 A Yes. And, you know, when I brought the
6 first packet of documents over in that meeting, I
7 left with the impression --

8 MS. BRECKENRIDGE: Wait. I'm going to
9 stop you right there. Anything that happened in that
10 meeting, because Mr. Terry and Mr. Berman were
11 present, that's considered attorney-client privilege.
12 So in terms of impressions you got from the meeting
13 or anything that took place in the meeting is not
14 something that counsel -- the defense counsel are
15 entitled to.

16 THE WITNESS: Okay.

17 MS. BRECKENRIDGE: We could talk about it
18 outside of their hearing. If there's something you
19 want to share, we can determine -- it may be that
20 it's innocuous.

21 MR. DOVE: Let's go off the record.

22 (A discussion was held off the

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1 record.)

2 MR. LITOW: Back on the record.

3 BY MR. LITOW:

4 Q Mr. Liveratti, you mentioned that you had a
5 ledger of documents that were in archives; is that
6 correct?

7 A That's correct.

8 Q Does this ledger contain all the documents
9 that are archived, or did you identify specific
10 documents that might be related to this case?

11 A That ledger involved the documents that our
12 prior fiscal agent and the Blue Cross, we have in
13 storage at Iron Mountain. And it was just a
14 description of what was in those -- inventory.

15 Q Iron Mountain, is that --

16 A I think that's the storage facility's name.
17 Yeah, Iron Mountain.

18 Q You also mentioned that you spoke to your
19 employees about the document requests. Who exactly
20 did you speak to?

21 A It would have been Nancy Davis because she
22 does all the public hearings establishment. She

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1 would hold all those. She would know where to find
2 them.

3 Q Did you instruct any of your other
4 employees regarding document requests?

5 A No. They wouldn't have had anything.

6 Q Did you give Nancy a copy of the document
7 requests?

8 A This?

9 Q Yes. Did you give her a copy of Exhibit
10 Liveratti 005?

11 A No, I did not.

12 Q What documents did you tell her to look
13 for?

14 A Any minutes, agendas that involved MCAC
15 public hearings or state plan amendments on the
16 pharmacy chapter or rates dealing with pharmacy.

17 Q Did you ask her to search through her
18 emails for responsive documents?

19 A No, I did not.

20 Q Does the State have any records of which
21 documents have been destroyed pursuant to the
22 retention policy?

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1 A I believe the state archives library would
2 have that.

3 **Q And where is that library, physically?**

4 A Oh. Well, actually, you --

5 MR. TERRY: Carson.

6 THE WITNESS: Carson Street -- on Stewart
7 Street. You go down two blocks, turn right, and you
8 are there.

9 MR. TERRY: You can go there at
10 lunchtime.

11 BY MR. LITOW:

12 **Q Do you know whether these records were**
13 **searched in connection with defendant's document**
14 **requests?**

15 A No, I don't.

16 **Q Has the State searched the files of**
17 **legislative staff for responsive documents?**

18 A We don't have access to that.

19 **Q When you say "we," you mean the compliance**
20 **unit?**

21 A The state administrative staff do not have
22 access to legislative staff records. It's like two

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1 bodies of government. They ain't giving us that.

2 You know, they have minutes and stuff on
3 their website that you might be able to access during
4 -- you know, like session minutes of the thing.

5 Those would be available. But other things, we don't
6 have access to that.

7 Q Do you know whether they were asked to look
8 for --

9 A I do not.

10 Q I refer you back to Exhibit Liveratti 005
11 there for a minute, Mr. Liveratti. Pages 10 through
12 -- 10 through 18 of that document refer to
13 interrogatories that defendants have propounded upon
14 the State. Do you see those interrogatories?

15 A Yes.

16 Q Were you involved in providing answers to
17 any of these interrogatories?

18 A Well, I went through this whole list, and
19 if I knew something, I wrote it down, and then I
20 shared it with counsel at that meeting.

21 Q And when was that meeting again?

22 A This summer.